

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA : DEFENDANT'S SENTENCING  
SUBMISSION

- against - :

HICHAM KABB AJ, : 20 Cr. 08 (RMB)

Defendant. :

-----X

**Introduction**

Hicham Kabbaj is scheduled for sentencing before your Honor on February 22, 2022 at 9:30 a.m. following his plea of guilty pursuant to a plea agreement with the government to Count One of a felony information charging him with wire fraud in violation of 18 U.S.C. § 1343.

Mr. Kabbaj, age 50, is a devoted husband to his wife of twenty years and a loving father to his two teenage children. In 2019, Mr. Kabbaj's wife was diagnosed with breast cancer, which has since aggressively spread to her lymph nodes and throughout her body. Over the last three years, Mrs. Kabbaj has undergone extensive medical treatment, including chemotherapy and radiation, and she has been hospitalized on numerous occasions. Her deteriorating physical condition leaves Mrs. Kabbaj dependent on her husband to assist her with daily activities and help facilitate her medical treatment. Her illness has also caused Mr. Kabbaj to become the sole caretaker of their two children. Consequently, the weight of the

instant case looms over Mr. Kabbaj and his family, as they worry what will happen to them if Mr. Kabbaj is sentenced to imprisonment.

Nonetheless, Mr. Kabbaj has accepted responsibility for his conduct by pleading guilty, and he is prepared to be sentenced by the Court. His criminal history is minimal and the instant offense is by far the most serious criminal conduct that Mr. Kabbaj has been involved in. He has been on pretrial release since August 2019, and in those two-and-a-half years, Mr. Kabbaj has been compliant with his bail conditions. (PSR ¶ 5).

Accordingly, for the reasons discussed herein and for those to be discussed at the time of sentencing, it is respectfully requested that Mr. Kabbaj be sentenced to home incarceration and be ordered to pay a fine, which would enable him to continue financially supporting and caring for his wife and his children.

#### **Presentence Report and Advisory Sentencing Guidelines**

Mr. Kabbaj has reviewed the revised Presentence Report (“PSR”) filed on March 26, 2020 prepared by U.S.P.O. Pamela Flemen and he has the following objections and/or clarifications:

- PSR ¶ 70 – Mr. Kabbaj refutes his mother’s statement to probation that “nobody [in Mr. Kabbaj’s family] helps [her].” Mr. Kabbaj wishes to clarify that he and his sisters have always taken care of his mother, providing her with physical and financial support. For example, Mr. Kabbaj has paid for his mother’s apartment and during the first year of the COVID-19 pandemic she lived in Mr. Kabbaj’s home.

- PSR ¶ 89 – As a clarification, the company that Mr. Kabbaj worked for from 2001 until 2013 was called *Authentidate*, not *Authentic*, as written in the PSR. Mr. Kabbaj left his job at Authentidate because the business appeared to be going under and he was not getting paid. It closed approximately two months later.
- PSR ¶ 88 – As a clarification, after leaving his position at Authentidate, Mr. Kabbaj looked for work but had difficulty finding a job until ultimately obtaining employment at Rakuten in 2015. He lived off of his savings during this period of unemployment.

The Guidelines set forth in the PSR reflects Mr. Kabbaj's plea agreement with the government, that is, a Base Offense Level of 7, an 18-level increase pursuant to U.S.S.G. § 2B1.1(b)(1)(J) because the loss amount from the offense exceeded \$3,500,000 but was less than \$9,500,000, a two-level increase pursuant to U.S.S.G. § 2B1.1(b)(10)(C) because the offense involved "sophisticated means", and a three-level reduction for acceptance of responsibility pursuant to §§ 3E1.1(a) and (b). Therefore, the total applicable offense level is 24. Notably, the total loss amount that Mr. Kabbaj is responsible for is \$6,051,453.43, which is in the middle of the loss amount range that necessitates an eighteen-point increase in offense level.

Mr. Kabbaj has zero criminal history points and is in Criminal History Category 1, which, when combined with an Offense Level of 24, yields an advisory Guidelines range of 51 – 63 months' imprisonment. Probation recommends a

sentence of 51 months. Probation also recommends that Mr. Kabbaj pay \$6,051,453.43 and does not recommend a fine. Mr. Kabbaj has also voluntarily forfeited two residential properties to the United States government.

### **Personal History and Characteristics**

Hicham Kabbaj, age 50, is a loving husband and father who has dedicated his life to helping those close to him. As evidenced by the letters submitted to the Court on his behalf, Hicham has continuously offered physical, emotional, and financial support to his immediate and extended family over the years. *See generally*, Exhibits A through D. His wife, Mounia, describes Hicham as “a great husband, a great father, helping his kids no matter what.” Exhibit A.<sup>1</sup> His sister, Salwa, writes, “My brother Hicham is the most influential person in my life. Ever since I can remember, Hicham has always been there for me, my daughters, and the entire family . . . [t]hroughout the years he has put his family and loved ones before himself.” Exhibit B. Hicham’s sister, Fadwa, describes him as “extremely kind, dependable, and [a] well regarded member of our family.” Exhibit C. His niece, Najwa, writes “Growing up my uncle has always been an important person in my life. He cared a lot for many people and was always the first person to help out . . . [h]e is like a second dad to me and loved by many.” Exhibit D. Also attached hereto as Exhibit E are photographs of Hicham and his family.

The only son of immigrant parents from Morocco, Hicham was born and raised in Queens, New York. He has three sisters, Fadwa Kabbaj, age 46, Soumaya

---

<sup>1</sup> Please note that Mounia’s letter is undated but was written in 2019.

Colleymore, age 62, and Salwa Fertitta, age 60, with whom he was raised and shares close relationships.<sup>2</sup> For the early years of his life, he and his family lived in a small, two-bedroom apartment in Corona. His father, Abdelaziz Kabbaj, who immigrated to the United States at age fifteen, was the sole financial provider of the family and worked the overnight shift as a room service waiter at the Helmsley Palace Hotel near Rockefeller Center. His mother, Fatima, stayed home to care for Hicham and his sisters. Because of his father's busy work schedule, Hicham rarely saw his father while growing up. Abdelaziz would come home from work at 6:00 a.m. and go straight to bed, and was back at work before Hicham returned home from school. Hicham recalls his father being very "hands off" – Abdelaziz barely spoke to his children, never played with Hicham and sisters, and he never attended school functions or sporting events. Hicham loved his father, but had always yearned for a deeper relationship with him.

When Hicham was 9 years old, his mother was raped in the stairwell of their apartment building. Hicham did not learn the details of the brutal attack until he was older, but he vividly remembers seeing his mother return home from the hospital battered and bruised. Thereafter, the family moved to a different apartment in Forrest Hills, and Hicham observed a distinct change in his father's demeanor as he became increasingly emotionally withdrawn. Moreover, despite his father's efforts, the family continued to struggle financially and Hicham's parents routinely argued about finances. Nonetheless, Abdelaziz continued to work the

---

<sup>2</sup> Soumaya and Salwa are Hicham's half-sisters, born from his mother's previous marriage. Hicham was 17 years old when he learned that his two older sisters were not his father's biological children.

overnight shift, justifying his absence from the home by telling Hicham and his family that if he worked hard now, he could eventually retire, live off of his pension, and spend the rest of his years enjoying time with his family.

Sadly, Abdelaziz's dreams never came to fruition. In 1997, at age 54, Abdelaziz suffered a stroke. He became paralyzed on the right side of his body and lost his ability to speak. Unable to care for himself, Abdelaziz spent the remaining eighteen years of his life in an assisted living facility. Hicham and his mother regularly made the thirty minute drive from their home in Forrest Hills to visit Abdelaziz at the facility in New Hyde Park, where Hicham would help feed his father, bathe him, and help him use the bathroom. The stroke caused Abdelaziz to miss out on many monumental aspects of Hicham's life, such as his wedding in Morocco, never getting to know Hicham's wife or his children, and never witnessing Hicham build his professional career.

After the stroke, Hicham took on the role of "father-figure" within his immediate family. Hicham's sister, Fadwa, states in her letter to the Court: "At a young age, Hicham had to take over a role that no sibling should endure, a father figure to my sisters and I after our father suffered a massive stroke. Hicham was there to guide us through that very difficult time in our lives. He became a caregiver to my mother, who was a stay at home mom her entire life." Exhibit C. Hicham's sister, Salwa, writes, "Hicham was there for all of us. If it was not for my brother stepping up and taking charge, I don't know where we would be right now. His comfort, strength and words of wisdom kept us going." Exhibit B.

Abdelaziz's stroke also shifted the financial responsibility to Hicham, who was now the "man of the household," and at 24 years old, he began working to support the family. Hicham had earned his bachelor's degree in political science, but decided to turn his longtime passion for computers into a profession. Having taught himself everything on his own, Hicham began providing contracting and consulting services to companies who were shifting to dial-up internet, and helped law firms transfer their law libraries to CD-ROM. Because the technology was newly emerging, there was not enough business for Hicham to survive on his own, and in 1998 he began working for a company, RX Remedy, as a systems administrator. In 2001, Hicham left RX Remedy for a more profitable position at Authentidate, which was located in Berkeley Heights, New Jersey, and he ultimately worked his way up to become director of technical operations. It was at Authentidate where Mr. Kabbaj developed the majority of his skills in computers and information technology.

During this time, Hicham was paying for his father's medical care, providing financial support to his mother since his father was no longer working, and helping his sister, who was a single parent.

Eventually, Hicham started his own family, and his responsibilities increased. He married his wife Mounia, whom he met in Morocco, in 2001, and they had two children, Alia, now age 18, and Adam, age 16. Mounia stayed home to care for the children while Hicham continued to work to support the family, just as his father did. Hicham embraced his role as the sole provider, but unlike his father,

Hicham wanted to be fully present in his children's lives, and he strove to find balance between building a successful career and maintaining meaningful relationships with his family. In her letter to the Court, Mounia describes Hicham as an excellent father who has gone "above and beyond" for his children. Exhibit A. His sister, Fadwa, writes, "Hicham is one of the best dads I have ever seen. From coaching baseball games, going to softball practice and sitting through countless dance recitals for his children and my own[.]" Exhibit C.

In 2013, Authentidate lost one of its major contracts and business plummeted. Hicham left the company in pursuit of new work, and Authentidate shut down approximately two months later. Unfortunately, Hicham was unable to find work for over a year. He enjoyed the extra time spent with his family, but worried about their future. In Mounia's letter, she describes how stressful it was for the family during this time, since she was a stay-at-home mother, and they lived off of savings and accrued significant debt in order to get by. *See* Exhibit A.

In May 2015, Mr. Kabbaj accepted a position with Rakuten, an international online marketing company. It was a good job, but demanding. Hicham's hours were much longer than before; he worked on weekends, traveled frequently, and consequently, began to miss out on important events in his children's lives.

On July 27, 2015, shortly after beginning his position at Rakuten, Hicham's father suffered a heart attack and died at 74 years old. Hicham went to work the next day because there was an important meeting with the CEO of Rakuten that he could not miss. That weekend, Hicham, the eldest male child, went to the morgue



and washed his father's dead body in accordance with Muslim tradition. There with his father, Hicham reflected on Abdelaziz's life in relation to his own. For twenty-four years he had watched his father work hard for little reward, never building relationships with his children, never enjoying himself, only to suffer a stroke and become bedridden until the day that he died. Now, with the high demands of his new job, Hicham feared going down a similar path, but the pressure to provide for his immediate and extended family remained.

### **Circumstances of the Offense**

While it is in no way an excuse for his offense conduct, the death of Mr. Kabbaj's father, combined with the ongoing pressure to financially support his family triggered Hicham's quest to make more money, leading to his involvement in the instant offense. In August 2015, he created a fictitious company and began submitting invoices to Rakuten purporting to be a third-party vendor providing information technology (IT) work. Throughout the scheme, some of the work that Mr. Kabbaj billed for he had actually done himself. Some of it was not done at all. Although he did not intend to continue the scheme for so long, it unfortunately spiraled out of control and continued for four years.

Mr. Kabbaj was arrested on September 4, 2019. On January 3, 2020, he waived indictment and accepted responsibility for his conduct by pleading guilty to the instant single-count information. He accepted responsibility for stealing over \$6,000,000 from Rakuten through fraudulent invoices. However, almost \$2,000,000 worth of invoices were for IT services that Mr. Kabbaj had performed. He is

extremely remorseful and ashamed of his conduct, and regrets that he did not seek help, either professionally or from his family, rather than try to handle his problems on his own. His poor decisions have cost him his job, tarnished his career, and has the potential of separating him from his family, the very opposite of what he has been striving for his whole life.

**Mitigating Circumstances in Favor of a Sentence to Home Incarceration**

***Mr. Kabbaj is the Sole Caretaker of his Wife and Children***

In addition to being the family's sole financial provider, Mr. Kabbaj has become the primary caretaker of his wife Mounia, who was diagnosed with breast cancer in July 2019. Since her diagnosis, Mounia has underwent a double-mastectomy, received chemotherapy and radiation, in addition to other treatments. Throughout the pendency of this case, Mounia's cancer has spread to her lymph nodes and other parts of her body, leaving doctors uncertain how long she will survive. Throughout the last year she has been hospitalized on numerous occasions, sometimes for months at a time, where Mr. Kabbaj was unable to see her due to the hospital restrictions posed by the pandemic.

Today, Mr. Kabbaj's days are consumed by taking care of Mounia. A typical day involves helping her get out of bed, feeding her, bathing her, dressing her and helping her use the bathroom. Mr. Kabbaj takes her to and from countless doctor's appointments located throughout Queens and Long Island, which last anywhere from two to five hours. Moreover, Mr. Kabbaj is the only one taking care of his children, in addition to maintaining the home and making sure there is food on the

table. His son Adam, age 16, is on the National Honor Society and involved in several sports and after-school activities, and Mr. Kabbaj drives him to and from school in between taking Mounia to her doctor's appointments. His daughter, Alia, is in her freshman year of college at Binghamton University where she is studying Biology and hopes to pursue medical school. Mr. Kabbaj tries to visit when he can, but is primarily consumed by caring for Mounia and Adam. In her interview with Probation, Mounia expressed that a sentence of imprisonment would have a devastating impact on their household because she would be unable to support her children without Hicham in their daily life. (PSR ¶ 68).

Given these difficult family circumstances, a sentence to imprisonment at a correctional institution would create undue burden and further harm to Mr. Kabbaj's wife and children, whom are innocent of any wrongdoing, and we respectfully request that the Court take this into consideration when imposing sentence.

### ***The COVID-19 Pandemic***

Additionally, the COVID-19 pandemic remains ongoing and is still a very real threat to incarcerated individuals. Mr. Kabbaj was infected with COVID-19 last summer which caused him to be hospitalized for six weeks. He continues to suffer long-term effects such as difficulty breathing and fatigue. A sentence to incarceration would increase his risk of becoming infected with COVID-19 and potentially becoming very ill again. Additionally, because of the pandemic, prisons remain on restrictive lockdowns, limiting family visitation, and offering limited

access to programs, recreation, medical and mental healthcare. It is uncertain where Mr. Kabbaj would serve a sentence of imprisonment, but it is likely that he will encounter similar conditions wherever he goes. As stated in *United States v. Mcrae*, “a day spent in prison under extreme lockdown and in well-founded fear of contracting a once-in-a-century deadly virus exacts a price on a prisoner beyond that imposed by an ordinary day in prison. While such conditions are not intended punishment, incarceration in such circumstances is, unavoidably, experienced as more punishing.” No. 17 CR. 643 (PAE), 2021 WL 142277, at \*5 (S.D.N.Y. Jan. 15, 2021) (citing *United States v. Rodriguez*, No. 00 Cr. 761-2 (JSR), 2020 WL 5810161, at \*3; *United States v. Salemo*, No 11 Cr. 65-01 (JSR), 2020 WL 2521555, at \*3 (S.D.N.Y. May 17, 2020); *United States v. Smalls*, No. 20 Cr. 126 (LTS), 2020 WL 1866034, at \*2 (S.D.N.Y. April 14, 2020)). Indeed, a sentence to incarceration at this time would be “more punishing” for Mr. Kabbaj, a non-violent offender whose family’s health and well-being depend on him being home.

### **Conclusion**

For all of the foregoing reasons, and for those to be discussed at the time of sentencing, it is respectfully submitted that the Court impose a sentence of home incarceration and a fine.

Dated: New York, New York  
February 1, 2022

/s/  
David Stern  
Rothman, Schneider,  
Soloway & Stern, LLP  
Attorney for Hicham Kabbaj  
100 Lafayette Street, Ste 501  
New York, New York 10013  
(212) 571-5500

To: CLERK OF THE COURT  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

HON. RICHARD M. BERMAN  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

ANDREW ROHRBACH  
NI QIAN  
Assistant United States Attorneys  
Southern District of New York  
One St. Andrew's Plaza  
New York, New York 10007